

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILD FISH CONSERVANCY, et al.,

Plaintiffs,

v.

NATIONAL PARK SERVICE, et al.,

Defendants.

CASE NO. C12-5109 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MOTION FOR
JUDICIAL NOTICE AND/OR TO
COMPLETE THE RECORD

This matter comes before the Court on Plaintiffs' motion for judicial notice and/or to complete the record (Dkt. 154). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants in part and denies in part the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On June 26, 2013, Plaintiffs filed the instant motion requesting that certain documents be considered in the review of Plaintiffs' claims. Dkt. 154. On July 8, 2013, Defendants responded. Dkt. 162. On July 12, 2013, Plaintiffs replied. Dkt. 163.

II. DISCUSSION

A. The Record

Section 706 of the Administrative Procedure Act (“APA”) directs a court reviewing an agency decision to “review the whole record or those parts of it cited by a party.” 5 U.S.C. § 706. Review of the “whole record” under section 706 “is to be based on the full administrative record that was before the [agency decisionmakers] at the time [they] made [their] decision.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

In this case, Plaintiffs request that the Court include in the whole record (1) NMFS’s documents that are relevant to the challenged actions, (2) the Department of Interior funding agreements, (3) the National Park Service webpages, and (4) a Seattle Times article. Dkt. 154 at 8–12. Defendants concede the issue on the ESA Consultation Handbook, the National Park Service’s FAQ Page, and the environmental assessments analyzing the effects of proposed hatchery programs on the Sandy River and Snake River. Dkt. 155, Seventh Declaration of Brian A. Knutsen (“Knutsen Decl.”), Exs. 10–13. With regard to the other documents, Plaintiffs merely argue that the documents were within the Defendants’ control. Being within a federal agency’s control is entirely different than being before the decisionmakers at the time they made their decision, and Plaintiffs have failed to show the latter. Therefore, the Court denies Plaintiffs’ motion as to the funding agreements, the other webpage, and the Seattle Times article.

1 **B. Judicial Notice**

2 The Court may take judicial notice of “a fact that is not subject to reasonable
3 dispute because it . . . can be accurately and readily determined from sources whose
4 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Judicial notice of
5 certain facts is appropriate in APA record review cases. *Dent v. Holder*, 627 F.3d 365,
6 371 (9th Cir. 2010) (noting that a court is not prohibited from taking judicial notice of the
7 agency’s own records in a case being reviewed on the administrative record).

8 In this case, Plaintiffs request that the Court take judicial notice of certain
9 documents, including the funding agreements, the Elwha River Restoration webpage, the
10 Seattle Times article, and the Opinion and Order entered by the United States District
11 Court for the District of Oregon in *Native Fish Society v. Nat’l Marine Fisheries Serv.*, D.
12 Or. No. 3:12-CV-00431-HA, Dkt. 120 (D. Or. May 16, 2013). Dkt. 154 at 4–8. The
13 Court declines to take judicial notice of these documents. Plaintiffs have failed to show
14 that the funding agreements are relevant to the issue of what was before the
15 decisionmakers when they made their decisions. The accuracy of a webpage providing
16 links and a newspaper article can be reasonably questioned, and Plaintiffs have failed to
17 show that these documents were considered by the decisionmakers. Last, the opinion of
18 another district court is at most persuasive and is not a document that the Court should
19 explicitly take judicial notice of. Therefore, the Court denies Plaintiffs’ motion as to
20 these documents.

III. ORDER

Therefore, it is hereby **ORDERED** that Plaintiffs' motion for judicial notice and/or to complete the record (Dkt. 154) is **GRANTED in part** and **DENIED in part** as stated herein.

Dated this 1st day of August, 2013.

A handwritten signature in black ink, appearing to read "Benjamin H. Settle", is written over a horizontal line.

BENJAMIN H. SETTLE
United States District Judge